

Notice of Allowability**Application No.**

10/743,975

Applicant(s)

DAVYDOVA ET AL.

Examiner

Angela M. Bertagna

Art Unit

1637

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to the responses filed on 6/17/2010 and July 7, 2010.
2. ☒ The allowed claim(s) is/are 93.
3. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some* c) ☐ None of the:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

* Certified copies not received: _____.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.
THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.

4. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
5. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
(a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
1) ☐ hereto or 2) ☐ to Paper No./Mail Date _____.
(b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date _____.
Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
6. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Attachment(s)

1. ☐ Notice of References Cited (PTO-892)
2. ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
3. ☐ Information Disclosure Statements (PTO/SB/08),
Paper No./Mail Date _____
4. ☐ Examiner's Comment Regarding Requirement for Deposit of Biological Material
5. ☐ Notice of Informal Patent Application
6. ☒ Interview Summary (PTO-413),
Paper No./Mail Date 20100714A.
7. ☒ Examiner's Amendment/Comment
8. ☒ Examiner's Statement of Reasons for Allowance
9. ☒ Other See Continuation Sheet.

/Young J Kim/
Primary Examiner, Art Unit 1637

Continuation of Attachment(s) 9. Other: proposed examiner's amendments of 6/25/10 and 6/30/10.

DETAILED ACTION

Status of the Application

1. Applicant's response filed on June 17, 2010 and the supplemental response filed on July 7, 2010 are acknowledged. Claim 93 is currently pending.

Applicant's amendment filed on June 17, 2010 has overcome all of the previously made objections to the specification and the drawings, and, accordingly, they have been withdrawn.

The provisional rejection of claim 93 on the ground of non-statutory obviousness-type double patenting made citing co-pending Application Serial No. 10/719,372 has been withdrawn in view of the claim amendments filed on June 2, 2010 in the '372 application, which render the two applications patentably distinct from one another.

The non-statutory obviousness-type double patenting rejection made previously over US 7,452,705 has also been withdrawn, because, upon further consideration, the claims of the '705 patent are patentably distinct from the instantly claimed method. As noted in MPEP 804, a double patenting rejection is only proper when the claims of an application under examination are patentably indistinct from those of a copending application or issued patent. In the instant case, the products recited in the claims of the '705 patent could be used to practice methods that are materially different from those of the instant application, such as a method comprising expressing and purifying an RNA polymerase encoded by the claimed nucleic acids and identifying compounds that inhibit the activity of the polymerase. Also, the method of making an RNA polymerase recited in the claims of the '705 patent is patentably distinct from the claimed method of using the RNA polymerase, since the two methods are designed to achieve fundamentally different goals and recite different and non-overlapping method steps.

No other rejections or objections remain outstanding.

EXAMINER'S AMENDMENT

2. An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.

Authorization for this examiner's amendment was given in a telephone interview with David Staple (Reg. No. 65,903) on July 13, 2010.

The application has been amended as follows:

In the claims:

Claim 93 (currently amended): A method of making RNA comprising:

(a) obtaining a N4 virion RNA polymerase consisting of a transcriptionally active mini-vRNAP, wherein said mini-vRNAP consists ~~consisting~~ of a sequence at least 95% identical to SEQ ID NOS: 4, 6, or 8;

(b) obtaining a single-stranded DNA oligonucleotide wherein said single-stranded DNA oligonucleotide contains a N4 virion RNA polymerase promoter sequence;

(c) admixing said N4 virion RNA polymerase and said single-stranded DNA oligonucleotide; and

(d) culturing said N4 virion RNA polymerase and said single-stranded DNA oligonucleotide under conditions effective to allow RNA synthesis.

Reasons for Allowance

3. The following is an examiner's statement of reasons for allowance: The instant claim is drawn to a method for making RNA using a recombinant truncated form of the N4 virion RNA polymerase termed "mini-vRNAP". The closest prior art is that of Dai et al. (Genes and Development (1998) 12(17): 2782-2790; cited on an IDS), which describes a method for using a full-length wild-type N4 virion RNA polymerase to synthesize RNA (see pages 2789-2790). However, neither Dai nor the remainder of the prior art teaches or suggests the truncated N4 virion RNA polymerases recited in claim 93. Accordingly, the claimed method is novel and unobvious.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

Conclusion

4. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Angela M. Bertagna whose telephone number is (571)272-8291. The examiner can normally be reached on M-F, 9- 5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gary Benzion can be reached on 571-272-0782. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Angela M Bertagna/
Examiner, Art Unit 1637

/Young J Kim/
Primary Examiner, Art Unit 1637